

STATE OF MICHIGAN
COURT OF APPEALS

GONZALEZ DESIGN ENGINEERING, INC.,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 15, 1997

No. 187413

Oakland Circuit Court

LC No. 95-490276-CK

Before: Young, P.J., and Gribbs and S. J. Latreille,* JJ.

PER CURIAM.

Plaintiff appeals the circuit court order granting summary disposition to defendant in this declaratory judgment action concerning insurance coverage. We reverse.

This case arose when plaintiff Gonzalez Design Engineering, Inc, incurred losses when one of its employees padded his work hours to obtain additional compensation. Under a contract with Ford Motor Company, some of plaintiff's employees provided services at Ford facilities and plaintiff charged the hours worked to Ford. When plaintiff learned that one of its employees had falsified his time records and that Ford had been overbilled, it notified Ford and Ford deducted the amount from plaintiff's invoice. Plaintiff submitted a proof of loss to defendant Citizens Insurance Company. Defendant denied the claim and asserted that coverage was excluded under the policy. At issue is construction of the following provision of the insurance policy issued by defendant to plaintiff.:

EMPLOYEE DISHONESTY COVERAGE FORM

A. COVERAGE

We will pay for loss of, and loss from damage to, Covered Property resulting directly from the Covered Cause of Loss.

2. Covered Cause of Loss: "Employee dishonesty".

* Circuit judge, sitting on the Court of Appeals by assignment.

D. ADDITIONAL EXCLUSIONS, CONDITIONS AND DEFINITIONS:

3. Additional definitions

- a. “Employee Dishonest” in paragraph A.2. means only dishonest acts committed by an “employee”, whether identified or not, acting alone or in collusion with other persons, except you or a partner, with the manifest intent to:

- (1) Cause you to sustain loss, and also

- (2) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions, or other employee benefits earned in the normal course of business) for:

- (a) The “employee”, or

- (b) Any person or organization intended by the “employee” to receive that benefit.

Courts view insurance contracts similarly to other contracts, as agreements between the parties, and will determine the terms of the agreement and enforce it accordingly. *Auto Club v Lozanis*, 215 Mich App 415, 418; 546 NW2d 648 (1996). If a contract is clear, the courts will enforce its terms and will not rewrite it. *Id.* An insurance contract is ambiguous if, after reading the entire contract, its language can be reasonably understood in differing ways. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70; 467 NW2d 17 (1991); *Royce v Citizens Ins Co*, 219 Mich App 537; ___ NW2d ___ (1996). Ambiguities are to be construed against the insurer, who is the drafter of the contract. *State Farm Mutual Automobile Ins Co v Enterprise Leasing Co*, 452 Mich 25; 549 NW2d 345 (1996). Further, exclusionary clauses are to be strictly construed against the insurer. *Fire Ins Exchange v Diehl*, 450 Mich 678; 545 NW2d 602 (1996). If an insurer intends to exclude coverage under certain circumstances, it should clearly state those circumstances in the section of its policy entitled “exclusions.” *Fragner v American Community Mutual Ins Co*, 199 Mich App 537, 540; 502 NW2d 350 (1993).

Here, we find that the policy language is ambiguous. Moreover, the purported exclusion is contained in the policy under the heading, “Additional Definitions”, and is not properly designated as an exclusion. Accordingly, the policy language here should be strictly construed against the insurer. Because the dishonest employee in this case did not earn the improper financial benefit here “in the normal course of business”, we conclude that the policy language does not specifically exclude plaintiff’s claim.¹

Defendant also argues that plaintiff’s claim is excluded because the dishonest employee had no “manifest intent” to cause plaintiff to sustain a loss, as required by the policy. There is no merit to this issue. The employee’s gains came only at plaintiff’s expense.

Reversed. Plaintiff being the prevailing party, it may tax costs pursuant to MCR 7.219.

/s/ Robert P. Young, Jr.

/s/ Roman S. Gibbs

/s/ Stanley J. Latreille

¹ Our conclusion is further buttressed by the defendant's concession at oral argument that the fraudulently paid compensation at issue in this case was *unearned*. As such, defendant's contention that Section D(3)(a)(2) of the policy precludes coverage falls of its own weight, as this provision purportedly excludes only "salaries, commissions fees...*earned* in the normal course of business.." (Emphasis added.)